

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

344 PROVIDENCE ROAD REALTY
TRUST, RICHARD J. WUNSCHER,
and NAUTILUS INSURANCE COMPANY,

Plaintiffs,

v.

AMERICAN SAFETY RISK RETENTION
GROUP, INC. and ARCHITECTURAL
DELEADING, INC.,

Defendants

CIVIL ACTION NO.: 04-40197-FDS

LOCAL RULE 16.1(D) JOINT STATEMENT OF THE PARTIES

Pursuant to Rule 16.1(D) of the Local Rules of the United States District Court for the District of Massachusetts and the Notice of Scheduling Conference of Judge Saylor dated February 23, 2005, the parties in the above-entitled matter propose the following pre-trial schedule:

I. DISCOVERY

PHASE 1- DISCOVERY AS TO INSURANCE AND NON-EXPERT INDEMNITY ISSUES

Initial Disclosures*:	April 22, 2005
Interrogatories and Requests for Production of Documents (first set) Served:	May 20, 2005
Responses to Requests for Production of Documents:	June 20, 2005
Interrogatory Answers:	July 8, 2005

* See issues raised in Section IV, infra.

Requests for Admissions and Follow-up Interrogatories and
Document Requests (if any) Served: August 5, 2005

Responses to Requests for Admissions and Follow-up Written
Discovery Served: September 9, 2005

Completion of Phase I Depositions: September 30, 2005

(For dispositive motions related to the insurance phase of the
proceedings and contractual indemnity, see Section II, below.)

PHASE II –DISCOVERY AS TO EXPERT INDEMNITY ISSUES

Plaintiff's Disclosure of Expert Witness Reports: February 24, 2006*

Defendant's Disclosure of Expert Witness Reports: March 24, 2006

Completion of Mediation (if parties elect): April 29, 2006

Completion of Expert Depositions: June 9, 2006

The parties further agree that the nature and number of discovery events otherwise shall be governed by Federal Rule of Civil Procedure 30(d) and Local Rule 26.1(C). Any party may file an appropriate motion seeking relief from the limitations on discovery. Testimony taken and discovery responses produced in *Kerri A. Ellis, Administratrix of the Estate of Susan Castell v. 344 Providence Road Realty Trust et al.*, Worcester Division of the Superior Court Department, Civil Action No. 00-2384, may be used under Fed. R. Civ. P. 32 and/or relied upon as if taken or provided in this case.

* Or 30 days after summary judgment decision, whichever is later. Following events will also be adjusted as necessary.

II. SCHEDULE FOR MOTIONS

Filing of Plaintiffs' Motion for Partial Summary Judgment on Insurance Issues, no later than:	October 28, 2005
Filing of Defendants' Oppositions and Cross-Motions, if any:	28 days after service
Filing of Reply and Opposition to Cross-Motions:	21 days after service
Hearing on Insurance Summary Judgment Motions:	As set by the Court

Filing of Defendants' Motion, if any, for Summary Judgment on Contractual Indemnity:	July 21, 2006
Filing of Plaintiffs' Oppositions and Cross-Motions, if any:	28 days after service
Filing of Reply and Opposition to Cross-Motions:	21 days after service
Hearing on Indemnity Summary Judgment Motions:	As set by the Court

III. SCHEDULE FOR TRIAL

Final pre-trial conference:	November 1, 2006
Trial – Bifurcated: Liability from Damages:	December 4, 2006

IV. ADDITIONAL DISCOVERY ISSUES

Plaintiffs maintain that requiring disclosure of their attorney fee and expense invoices pursuant to Federal Rule of Civil Procedure 21(a)(1)(C) on which part of their computation of damages is based would be unfair and improper at this time prior to a determination of liability questions. The plaintiffs will produce as part of their initial disclosures under Rule 26(a)(1) a tabular summary of their attorneys' fees and expenses arranged by invoice number. Un-redacted disclosure of the descriptions contained in attorney fee and expense invoices would reveal

attorney-client privileged communications or mental impressions, conclusions, opinions, or legal theories concerning the litigation protected by the work product doctrine. Furthermore, the information contained in these descriptions is neither relevant nor admissible to prove the claims or defenses in this case. What counsel for the plaintiffs thought after state court litigation commenced has no rational tendency to prove whether Architectural Deleading is obligated to indemnify the plaintiffs, whether that indemnification obligation was triggered by the death of Ms. Castell, whether the indemnification agreement is an insured contract under Architectural Deleading's policy with American Safety Risk Retention Group, or whether American Safety Risk Retention Group has engaged in unfair business acts or practices. The plaintiffs submit that in the interest of justice and fairness and to avoid the imposition of an undue burden, any determination as to the reasonableness of the amounts claimed should be determined after the liability phase of this case is complete.

V. CERTIFICATION

All parties' certifications concerning compliance with Local Rule 16.1(D)(3) will be submitted to the Court or with this Joint Statement.

No party consents to a trial before a United States Magistrate Judge.

ARCHITECTURAL DELEADING, INC.,
AS DEFENDANT AND NOT AS
DEFENDANT IN CROSS-CLAIM

By its attorneys:

MORRISON MAHONEY LLP



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The defendant,

AMERICAN SAFETY RISK RETENTION
GROUP, INC.

By its attorneys:

CLARK, HUNT & EMBRY

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(617) 494-1920

The plaintiffs,

344 PROVIDENCE ROAD REALTY TRUST,
RICHARD WUNSCHER, and NAUTILUS
INSURANCE COMPANY

By their attorneys:

SMITH & DUGGAN LLP

/s/ Matthew J. Walko

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Two Center Plaza, Suite 620
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(617) 228-4400

Dated: March 22, 2005

ARCHITECTURAL DELEADING, INC.,
AS DEFENDANT AND NOT AS
DEFENDANT IN CROSS-CLAIM

By its attorneys:

MORRISON MAHONEY LLP

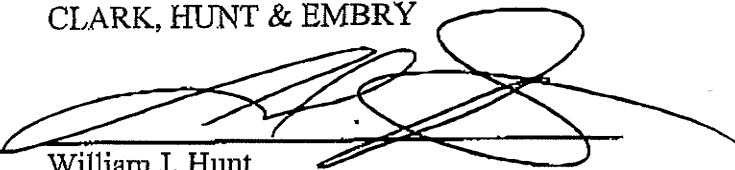
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(617) 228-4400

Dated: March 22, 2005

CERTIFICATE OF SERVICE

The undersigned certifies service of the foregoing on March 23, 2005, in accordance with Federal Rule of Civil Procedure 5(b)(2)(D) and United States District Court for the District of Massachusetts Electronic Case Filing Administrative Procedure § E(2) as all parties, having appeared in this action through counsel admitted to practice before this Court, have been identified by the Clerk as receiving Notice of Electronic Filing.

/s/ Matthew J. Walko
Matthew J. Walko (BBO No. 562172)